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10/811,003	03/26/2004	Carlos Jose Barroso	CFLAY.00216	9024
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EXAMINER				
WONG, LESLIE A				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/811,003  
Filing Date: March 26, 2004  
Appellant(s): BARROSO ET AL.

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Chad Walter  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed February 4, 2008 appealing from the Office action mailed September 19, 2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

Earle et al., Food Product Development, 2001, CRC Press, Woodhead Publishing Limited, Cambridge, England, pages 194-256 and 317-347.

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Earle et al (Food product development).

Earle et al disclose food product development comprising identifying a demographic group (e.g. culture, religion, country), identifying flavors familiar to the groups (e.g. wine, vegetables, cake), identifying a desired concept for product development (e.g. snack foods, sauce), using the knowledge obtained to develop a product for the selected demographic group (see pages 194-256 and 317-347, especially pages 213, 216, 221, 222, 224, 236, Tables 5.10, 5.13, and Figure 5.9).

The identification of flavor drivers is obvious to that of Earle et al as all attributes are considered in product development including descriptive sensory analysis (Tables 5.13 and 7.6).

It is obvious to use well-known product development techniques to do no more than yield predictable results.

**(10) Response to Argument**

Appellant argues that Earle et al do not teach identifying flavor drivers familiar to said demographic groups. Appellant argues that Earle et al do not teach identifying a desired product concept for said food product.

Earle et al identify a demographic group based on culture, religion, country etc (see page 213). Certainly, the identification of a demographic group results in the identification of specific flavors. For example Australians prefer salty products and New Zealanders prefer sweeter products, wherein tropical flavors are popular with New Zealanders (see page 222, first paragraph).

Earle et al also teach the development of a new sauce product, wherein the demographic group is New Zealanders (specifically Auckland), six flavors are identified, the product is tested by the consumers, and some flavors are removed from production and new flavors are added (see all of Section 7.4, pages 340-345, including Table 7.6). It is noted that the identified flavors are the flavor drivers and the sauce product is the desired product concept.

Appellant argues that Earle et al teach a top-down approach while the claimed invention is a bottom-up approach.

The order of events is seen to be no more than a matter of choice and well-within the skill of the art. Appellant states on page 14, lines 16-18, of the specification, that "specific sequential order need not be followed."

It is well-known that different demographic groups have specific flavors and foods by which they are identified. As an example, certain demographic groups (e.g.

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Hispanic) prefer spicy foods. Certain countries or regions enjoy specific flavors. For example, the Chesapeake Bay area is well-known for the use of Old Bay® seasoning in and on a multitude of food products including sea food and snack foods such as potato chips.

Appellant is using well-known product development techniques to obtain no more than expected results. It is not seen where Appellant obtains anything other than expected results.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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